

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ESTATE OF CHARLES CHIVRELL, et al.,  
Plaintiffs,  
v.  
CITY OF ARCATA, et al.,  
Defendants.

Case No. [22-cv-00019-HSG](#)

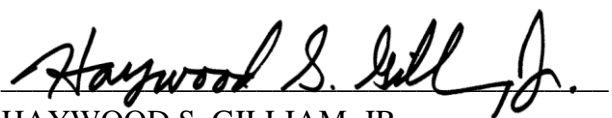
**ORDER RE: MOTION TO DISMISS**

Re: Dkt. No. 61

In their pending motion to dismiss, City Defendants move to dismiss Plaintiffs' Sixth Cause of Action for Excessive Force under the California constitution. Dkt. No. 61 at 8. In their reply brief, City Defendants argued, for the first time, that Plaintiffs' Article 1, § 13 excessive force claim should be dismissed because the California constitution does not provide a direct cause of action for damages for violation of due process life, liberty, or property interests. Dkt. No. 67 at 7. While this appears to the Court to be an accurate statement of the law, Plaintiffs have not had an opportunity to respond to this argument because it was not raised until reply. Accordingly, Plaintiffs' counsel is DIRECTED to file a response of no more than two pages addressing only the narrow issue raised by Defendants, namely whether there is any legal support for the existence of a private cause of action for damages under this provision of the California constitution. The response should preferably cite Ninth Circuit or California state court cases (if there are any) before relying on district court decisions. Any response is due no later than September 26, 2023, at 5:00 PM.

**IT IS SO ORDERED.**

Dated: 9/21/2023

  
HAYWOOD S. GILLIAM, JR.  
United States District Judge